IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 421 of 1984

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD MUNICIPAL CORPORATION & 1 - Appellant(s)
Versus
NEMINATHNAGAR CO.OPERATIVE HOUSING SOCIETY LIMITED & 1 - Defendant(s)

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Appearance :
MR PRASHANT G. DESAI for Appellant(s) : 1 - 2.
MR JS PATEL for Defendant(s) : 1,
MR HARIN P RAVAL for Defendant(s) : 1,
None for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 02/08/2006

ORAL JUDGMENT

1. Present appeal has been filed by the appellants herein – original defendants (hereinafter referred to as “the defendants”) challenging the judgment and decree passed by the learned City

Civil Court, Ahmedabad, dated 1st April, 1983 passed in Civil Suit No.3728 of 1979 in decreeing the said suit and directing the defendants to take adequate steps for removal of encroachment made in Town Planning Road and in Final Plot No.232 of Town Planning Scheme No.21 (Ambawadi) and further directing the defendants to take adequate steps for pavement of the Town Planning Road and for construction of Health Centre and Maternity Home in Final Plot No. 232 of Town Planning Scheme No.21 (Ambawadi) within 18 months time.

2. The respondents herein – original plaintiffs filed the aforesaid Civil Suit No.3728 of 1979 in the City Civil Court, Ahmedabad, for a mandatory injunction to clear up the encroachment made by the construction of the hutments upon 40 ft wide Town Planning Scheme Road situated between Final Plot Nos.237 and 238 on one side and Final Plot No. 232 and to make the said road serviceable by making necessary pavement. It was also further prayed for a

mandatory injunction to remove the encroachment made by the hutments upon Final Plot No.232 of Town Planning Scheme No.21 and to make use of the said plot for the purpose of Health Centre and Maternity Home, the purpose for which, it is reserved and allotted to them under the aforesaid Town Planning Scheme.

3. It was averred in the suit that the plaintiff No.1 was a registered Co-operative Housing Society and the plaintiff No.2 was the member of the said society and has built a house in the said society which abuts the Town Planning Road. It was averred that the said society is the owner of the Final Plot Nos.237 and 238 of Ahmedabad, Town Planning Scheme No.21 (Ambawadi). It was averred that to the north of Final Plot Nos.237 and 238, a municipal road has been provided under the Town Planning Scheme No.21 and abutting the said society, there was a 40 ft wide Town Planing Scheme Road. It was submitted that to the further north of the said road, there situated a Final Plot No.232 and the

said plot is allotted and/or reserved for the purpose of Health Centre and Maternity Home in favour of the defendant No.1 – Municipal Corporation. It was submitted that the Town Planning Scheme No.21 has been finalized and has come into force from 1st October, 1970 and since then, the Corporation is vested with the ownership of Final Plot No.232 for the purpose of constructing Health Centre and Maternity Home. It was submitted that though the Corporation is bound under the aforesaid Scheme, which has become final, to implement the same and utilize the land/Final Plot, which was reserved for a specific purpose mentioned in the Scheme, it was submitted that instead of using Final Plot No.232 for the purpose for which it was reserved, the Corporation has illegally permitted the hutman dwellers to occupy the land of Final Plot No.232 and the land of Town Planning Road situated to the south of Final Plot No.232. It was submitted that under the provisions of the Town Planning Act and Scheme, the plot was required to be used by the

Corporation only for the purpose for which it was reserved and that the Corporation was required to remove the encroachment from the public road i.e. 40 ft wide road and therefore, it was requested to pass decree as prayed for.

4. The suit was resisted by the defendants by filing Written Statement at Exh.10. It was submitted that the suit is not maintainable in law and even if it is tenable in law, the plaintiffs are not entitled to reliefs sought. It was also further submitted that the appropriate authority was not made a party, who is required to carry out the Town Planning Scheme and therefore also, the suit was not maintainable. It was submitted that the defendant – Corporation is going to use Final Plot No.232 for the purpose for which it was earmarked under the Final Scheme but that would be done after accommodation is found out for hutman dwellers, who were residing in the said plot. It was further contended that the implementation of the Scheme is not mandatory

but is discretionary and the defendant – Corporation has exercised its discretion properly for not implementing the Scheme and that would cause hardship to the poor hutman dwellers. It was further contended that the defendant – Corporation was gradually making provisions for slum clearance and would make provisions for hutman dwellers, who are occupying Plot No.232 and the Town Planning Road but considering the financial aspects, it was not possible for the Corporation to shift them immediately. It was further contended that the construction of a hut was not on a permanent basis and it is for the time being and therefore, there is no violation of any Rules or Bye-laws.

5. The learned trial Court raised the issues at Exh.21. On behalf of the plaintiffs, the plaintiff No.2 was examined at Exh.28. The plaintiffs relied upon the documentary evidence produced vide list Exhs.3, 15 and 19. The defendants did not lead any oral as well as

documentary evidence. Considering the evidence on record and the provisions of the Bombay Town Planning Act and the provisions of the Gujarat Town Planning Act as well as considering the fact that the Town Planning Scheme has become final and there is 40 ft wide Town Planning Road and considering the fact that the Final Plot No.232 was reserved under the Town Planning Scheme for the purpose of Health Centre and Maternity Home, the learned trial Court decreed the suit directing the Corporation to clear 40 ft wide road from encroachment and further directed the Corporation to implement the Town Planning Scheme, meaning thereby, directing the Corporation to have Health Centre and Maternity Home on Final Plot No. 232 and for that purpose, the learned trial Court granted 18 months time. Being aggrieved and dissatisfied with the judgment and decree passed by the learned City Civil Court, Ahmedabad, the defendants have preferred the present appeal.

6. Shri P.G.Desai, learned advocate appearing on

behalf of the Corporation, has challenged the judgment and decree passed by the learned trial Court only on two grounds. He has submitted that the plaintiffs have no proprietary ownership right in Final Plot No.232 and therefore, the suit, at the instance of the plaintiffs, is not maintainable. He has further submitted that assuming that the suit is maintainable, the learned trial Court ought not to have decreed the suit directing the defendant – Corporation to have Health Centre and Maternity Home on Final Plot No.232, within stipulated time of 18 months. Shri P.G.Desai, learned advocate, has also further submitted that so far as the removal of encroachment from 40 ft wide Town Planning Road is concerned, the same has already been removed and to that extent the decree has already been satisfied and the only grievance, which will survive is with regard to Final Plot No.232 i.e. Health Centre and Maternity Home.

7. It is not in dispute that the Town Planning Scheme No.21 (Ambawadi) has become final under

the provisions of the Bombay Town Planning Act. It is also not in dispute that the Final Plot No.232 is reserved in favour of the Corporation for Health Centre and Maternity Home. It is also not in dispute that the Municipal Corporation cannot use the Final Plot for the purpose other than for which the land is reserved. Even otherwise, under the provisions of the Bombay Town Planning Act and now under the provisions of the Gujarat Town Planning Act, the Municipal Corporation cannot use the land, which is allotted to them for the purpose other than for which the land is reserved. Under the circumstances, the Municipal Corporation cannot use the Final Plot No.232 for the purpose other than the Health Centre and Maternity Home. If the Corporation is permitted and/or allowed to use the Final Plot for the purpose other than the Health Centre and Maternity Home, the purpose for which the Scheme is sanctioned will be frustrated and the provisions of the Town Planning Act would be violated. Under the circumstances, the learned trial Court has

rightly held that the Municipal Corporation cannot use the Final Plot No. 232 for the purpose other than the Health Centre and Maternity Home. Considering the provisions of the Bombay Town Planning Act and now Gujarat Town Planning Act, more particularly, Sections 67 and 68 of the Act and the Regulations, the appropriate authority of the Corporation is bound to implement the Town Planning Scheme. It is not in dispute that the powers of appropriate authority are delegated to the Corporation. As held by the Hon'ble Supreme Court in case of ***The Municipal Corporation for Greater Bombay & Anr. V/s. The advance Builders (India) Pvt Ltd and Ors. r***eported in **AIR 1972 SC P-793** and in the recent judgment of the Hon'ble Supreme Court in case of ***N. Nanalal Kikalawala & Anr. V/s. The State of Gujarat & Ors.*** reported in **AIR 2006 SC P-1,** the authority under the Town Planning Act are bound to implement the Town Planning Scheme. Under the circumstances, by directing the Corporation to have Health Centre and Maternity Home on Final Plot No.232, the learned trial

Court has directed the Corporation to implement the Town Planning Scheme, which has become final, by which it cannot be said that there is any illegality committed by the learned trial Court. So far as contention on behalf of the appellants that as the plaintiffs have no proprietary ownership right so far as Final Plot No.232 is concerned, it is required to be noted that such a contention was not raised before the learned trial Court. The learned advocate appearing on behalf of the appellants has relied upon Section – 9 of the Code of Civil Procedure. Apart from the fact that such a contention was not raised before the learned trial Court, the plaintiff No.2 being a citizen is very much interested in seeing that the Town Planning Scheme is implemented and the purpose for which, the Final Plot was reserved i.e. Health Centre and Maternity Home, which is in public interest, and therefore, it cannot be said that the plaintiffs had no locus and/or right to file the suit for the aforesaid reliefs. Such a contention is absolutely technical in nature.

The defendant – Corporation cannot run away from implementing the Town Planning Scheme and from using the Final Plot for the purpose for which the same is reserved. It is required to be noted at this stage that even the judgment and decree is partly complied with and 40 ft wide Town Planning Road is already constructed and paved. Though 18 months time was granted in the year 1983, the Corporation has not used the Final Plot No.232 for the purpose for which it was reserved under the Town Planning Scheme. Under the circumstances, there is no substance in the present appeal.

8. At this stage, Shri P.G.Desai, learned advocate, press for time to implement the Town Planning Scheme and to comply with the judgment and decree passed by the learned trial Court so that the Final Plot No.232 of Town Planning Scheme No.21 (Ambawadi) can be used for the purpose for which it was reserved under the finalized Town Planning Scheme. He prays for 4 months time. In the facts and circumstances of the case, the

appellants are granted time upto 31st December, 2006 to comply with the judgment and decree passed by the learned trial Court and to implement the Town Planning Scheme No.21 (Ambawadi), which has become final and to use Final Plot No.232 of Town Planning Scheme No.21 (Ambawadi) for the purpose for which it is reserved i.e. for the construction of Health Centre and Maternity Home, which is for public purpose.

9. With these, the present appeal is dismissed. There shall be no order as to costs. Ad-interim relief, if any, stands vacated forthwith.

[M.R.SHAH, J.]

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